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**Ralph C. Garcia, a sole proprietorship d/b/a R.C. Electric and International Brotherhood of Electrical Workers, Local No. 234.** Case 32-CA-15516

May 14, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on June 20, 1996, the General Counsel of the National Labor Relations Board issued a complaint and an order withdrawing approval of settlement<sup>1</sup> on January 17, 1997, against Ralph C. Garcia, a sole proprietorship d/b/a R.C. Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 21, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On April 22, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 11, 1997, notified the Respondent that unless an answer were received by March 17, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The order and complaint states that a settlement was approved by the Regional Director for Region 32 on September 13, 1996, but that the Respondent failed to discharge his obligations under the settlement agreement.

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a California sole proprietorship with an office and place of business in Salinas, California, has been engaged as an electrical contractor in the building and construction industry, providing services to customers on both a retail and nonretail basis. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, received gross revenues in excess of \$500,000, purchased and received goods and materials valued in excess of \$5000 which originated outside the State of California, and provided services valued in excess of \$50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

On March 19, and April 3, 1996, the Respondent interrogated applicants for employment concerning their union membership and/or activities. On April 11, 1996, the Respondent told an applicant for employment that he would not be hired because of his union membership and/or activities.

Since about March 18, 1996, the Respondent has refused to hire James Ray Nichols and Forest Bayer because they joined or assisted the Union or because they engaged in other protected concerted activities for the purpose of mutual aid or protection.

### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By refusing to hire Nichols and Bayer, the Respondent has also discriminated, and is discriminating, in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to hire James Ray Nichols and Forest Bayer, we shall order the Respondent to offer the discriminatees employment to the positions which they would have had, but for the discrimination against them, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges which they would have enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Ralph C. Garcia, a sole proprietorship d/b/a R.C. Electric, Salinas, California, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Interrogating applicants for employment concerning their Union membership and/or activities.

(b) Telling applicants for employment that they will not be hired because of their Union membership and/or activities.

(c) Refusing to hire applicants for employment because they join or assist the Union or because they engage in other protected concerted activities for the purpose of mutual aid or protection.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer James Ray Nichols and Forest Bayer employment to positions that they would have had, but for the discrimination against them, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges which they would have enjoyed.

(b) Make Ray Nichols and Forest Bayer whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports,

and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Salinas, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 14, 1997

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate applicants for employment concerning their membership in International Brotherhood of Electrical Workers, Local No. 234 and/or their union activities.

WE WILL NOT tell applicants for employment that they will not be hired because of their union membership and/or activities.

WE WILL NOT refuse to hire applicants for employment because they join or assist the Union or because they engage in other protected concerted activities for the purpose of mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer James Ray Nichols and Forest Bayer employment to positions that they would have had, but for the discrimination against them, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges which they would have enjoyed.

WE WILL make Ray Nichols and Forest Bayer whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

RALPH C. GARCIA, A SOLE PROPRIETOR-  
SHIP D/B/A R.C. ELECTRIC